

No. 10514

United States
Circuit Court of Appeals
For the Ninth Circuit.

KENNETH ALEXANDER,

Appellant,

vs.

LT. GENERAL JOHN L. DE WITT, Commanding
General of the United States Army of the West-
ern Defense Command and Fourth Army, and
R. B. HOOD, Special Agent in Charge of the
Federal Bureau of Investigation of the United
States Department of Justice located at Los
Angeles,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

SEP - 1 1943

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

LORRIN ANDREWS,
326 West Third St.
Los Angeles, Calif.
and

AVERY M. BLOUNT
1308 Washington Bldg.
Los Angeles, Calif.

For Appellees:

CHARLES H. CARR,
United States Attorney

W. W. WORTHINGTON,
Assistant United States Attorney
600 U. S. Post Office and Court House
Bldg.
Los Angeles, Calif. [1*]

In the District Court of the United States in and for
the Southern District of California, Central
Division

No. 2909-P.H.

KENNETH ALEXANDER,

Plaintiff,

vs.

LT. GEN. JOHN L. DE WITT, RANDELL LAR-
SON, Lt. Col., F.A., R. B. HOOD, Special
Agent in Charge of Federal Bureau of Inves-
tigation, United States Department of Justice,
at Los Angeles, California, HUGH T. FUL-
LERTON, Major, A.G.D., Assistant Adjutant
General, L. G. WHITE, Investigator for Head-
quarters Western Defense Command and
Fourth Army, L. F. SLOAN, Area Supervisor,
War Relocation Authority, DOE ONE, DOE
TWO and DOE THREE,

Defendants.

COMPLAINT FOR PRELIMINARY INJUNC- TION AND FOR DAMAGES

Plaintiff alleges that:

I.

Jurisdiction of this Court is founded upon a
Federal question arising under the Constitution of
the United States; including more particularly:

1—The right of the plaintiff to freedom of re-
ligion, freedom of speech, freedom of the press,

freedom of assemblage, and the right to petition the Government for a redress of grievances as guaranteed by the First Amendment of the United States Constitution; [2]

2—The right of the plaintiff under the Fifth Amendment to a fair and full hearing, to be informed of the nature or cause of any accusation against him, to a presentment or an indictment of a grand jury, to a public trial, to a trial by jury, and to counsel;

3—The rights of the plaintiff under the Fifth Amendment, to liberty and property, and more particularly the right to earn a livelihood and engage in his occupation, the right to establish and maintain a home, the right to free movement; and the right to equality of treatment under the law and to be free from discrimination and persecution solely because of his religious and economic views.

The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars.

II.

Plaintiff is a naturalized citizen of the United States of America; plaintiff was born in London, England, about the year 1892, and came to the United States as an immigrant in the year 1904, disembarking at New York City. Plaintiff became a naturalized citizen on June 15, 1915, at Honolulu, T. H., and has since said date been an American citizen.

Plaintiff, desiring to serve the country of his adoption, enlisted in the United States Army at

Schofield Barracks, T. H., on August 27, 1917, and was subsequently honorably discharged on October 16, 1917, on account of physical disability.

Plaintiff, further desiring to serve his country which was then engaged in World War I, at that time voluntarily joined the United States Navy on April 9, 1918, at Washington, D. C., and served a four year enlistment and was honorably discharged on April 18, 1922, as Chief Photographer, P.A., in New York City.

Plaintiff, further desiring to offer his services to aid his country, in September of 1939 made application to the Navy [3] Department, Bureau of Navigation, offering to volunteer his services to the United States. The Navy Department, Bureau of Navigation, Washington, D. C., replied to plaintiff's offer of enlistment as will be shown by a letter from C. W. Nimitz, Chief of Bureau. Copy of said letter is attached hereto, marked Exhibit A, and made a part hereof.

Plaintiff, further desiring to offer his services to his country, on October 6, 1940, addressed a communication to the War Department, Washington, D. C., offering to volunteer in the United States Army. Copy of said communication is attached to this complaint, marked Exhibit B, and made a part hereof. An answer to plaintiff's offer of enlistment in the United States Army was made by the War Department in Washington, D. C., on December 21, 1941, by L. B. Hickam, Major, Air Corps, Assistant Chief, Military Personnel Division.

A copy of said communication is attached hereto, marked Exhibit C, and made a part hereof.

On December 8, 1941, the day following attack on Pearl Harbor by Japan, plaintiff addressed a communication to Headquarters Air Force, Washington, D. C., making inquiries regarding his application to enlist in the Air Force of the United States Army. A copy of said communication, dated December 8, 1941, is attached hereto, made a part hereof and marked Exhibit D.

Plaintiff, desiring to aid his country in World War II in which it is now engaged, voluntarily enlisted in the United States Navy at Los Angeles, California, on May 31, 1942, and served in said Navy as a Chief Photographer, P.A., until he was honorably discharged on September 25, 1942. Plaintiff further states that upon his discharge from the United States Navy on September 25, 1942, at Pensacola, Florida, he returned to his home and place of residence in Los Angeles, California, and promptly reported to the Naval Intelligence Department of the United States Navy at Los Angeles and to the Federal Bureau of Investigation in said city [4] offering to make known to said organizations any information which he had in his possession that would be of assistance to the United States Government. That thereafter the plaintiff, having been denied an opportunity to serve in the Armed Forces of the United States, tried to secure employment in the defense industry at his profession as an expert photographer and photo technician, but for reasons unknown to plaintiff he was denied an

opportunity to work at his trade and profession. Then plaintiff secured employment at his profession as a photographer and was employed by Pacific Studios, commercial photographers, where he has been regularly employed until served with notices and orders from Lt. Gen. John L. De Witt, United States Army Commander, as hereinafter set forth.

Plaintiff further represents that his only means of livelihood is to work at his profession, that of a photographer and photo technician.

III.

Plaintiff has continuously maintained a legal residence in the United States and its territories since he became a citizen of the United States in the year of 1915, and has exercised his right of franchise in different elections held in the United States during said time.

IV.

That Lt. Gen. John L. De Witt is the Commanding General of the United States Army of the Western Defense Command and Fourth Army, comprising an extended area along the Pacific Coast of the United States, and the headquarters and residence of said Lt. Gen. John L. De Witt are at Presidio, San Francisco, California.

That defendants Hugh T. Fullerton, Major, A.G.D., Assistant Adjutant General, and Randell Larson, Lt. Coloney, F.A., Doe One, Doe Two and Doe Three are all officers in the United States Army under the command of said Lt. Gen. John L. De

Witt, Doe One, Doe Two and Doe Three having been appointed as a board of officers [5] to order the exclusion of persons from said Western Defense Command, but their actual names are unknown to plaintiff, plaintiff not being advised of their names at the time of their meeting with him and at the time they conducted an inquiry regarding plaintiff.

V.

Defendant R. B. Hood is a Special Agent in Charge of the Federal Bureau of Investigation of the United States Department of Justice located at Los Angeles, California.

Defendant L. G. White is an Investigator for the Headquarters of the Western Defense Command, Fourth Army of the United States stationed at Los Angeles, California.

Defendant L. F. Sloan is the Supervising Officer in charge of the War Relocation Authority at Los Angeles, California.

Upon information and belief plaintiff alleges that each of said defendants is under the orders and control of the defendant Lt. Gen. John L. De Witt.

VI.

On February 27, 1943, defendant Randell Larson, Lt. Col., F.A., acting under the orders and control of Lt. Gen. John L. De Witt, caused to be executed an order signed by him in his capacity as an officer of the Headquarters of the Western Defense Command and Fourth Army in charge of the Individual Exclusion Hearing Board, addressed to the plaintiff,

advising plaintiff that on Tuesday, March 11, 1943, at 1:30 p. m. at Room 216, Rowan Building, 458 South Spring Street, Los Angeles, California, an inquiry would be made at said time and place, and requesting the plaintiff to advise at least 24 hours prior to the time of hearing if he intended to appear. Copy of said communication is attached hereto, made a part hereof, and marked Exhibit E. Said communication advised plaintiff that he might be accompanied by counsel to act as his personal advisor, but he was advised that any counsel who might represent him would not be heard by the Board and that [6] said counsel would not be permitted to examine witnesses. The communication also advised that the inquiry by the Board was in no sense a criminal proceeding and that plaintiff was not charged by the communication with any penal offense. That on March 11, 1943, at the place and at the time directed in said summons or communication, plaintiff appeared before the so-called Individual Exclusion Hearing Board and was advised that said hearing was to be held in a room at the Biltmore Hotel; that thereafter and forthwith the plaintiff went to a room in the Biltmore Hotel in the City of Los Angeles, California, as directed, where he was confronted by defendants Doe One, Doe Two and Doe Three. Said parties required plaintiff to take oath as to all recitals made by him. The said Board, representing themselves to be a board of inquiry, made inquiries in detail into plaintiff's occupation and relative to his activities in political organizations

and as to his politics and as to his religion, and inquired of plaintiff if he possessed any psychic power by which he communicated with different parties in the United States. Plaintiff was denied an opportunity to examine any information in possession of the Board which might have been detrimental to his interest, nor was he advised that the Board had any information of that character. Plaintiff was advised that much of the information about which they made inquiry was based upon rumor which had been communicated to the Board by parties unknown to plaintiff and whose identity the Board refused to make known to plaintiff. Plaintiff was not given an opportunity to be confronted by witnesses against him, if there were any, and if there were any such witnesses their testimony was taken without affording plaintiff an opportunity to be present at the taking of such testimony or to cross-examine such witnesses or to otherwise and in any manner or form to refute any such testimony. Plaintiff was without counsel and was not permitted in any way to participate in said proceeding except to answer questions and interrogatories that were [7] propounded to him.

VII.

That on April 21, 1943, plaintiff was served with a copy of an Individual Exclusion Order No. 1K-7, dated April 14, 1943. A copy of said Individual Exclusion Order is attached hereto, made a part hereof and marked Exhibit F. Said Individual Exclusion Order No. 1K-7 purports to ex-

clude plaintiff within ten (10) days from date of service of said order from the States of California, Arizona, Oregon and Washington on the West Coast of the United States, and also excludes plaintiff from date of service of the order from the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, the District of Columbia, and a part of the State of Florida, as defined and designated by Proclamation No. 1, dated May 16, 1942, Headquarters Eastern Defense Command, First Army, Government Island, New York, H. A. Drumm, Lt. Gen., United States Army, Commanding; and from entering into, being in or remaining in, from and after said date, Military Area No. 1 of Florida, Military Area No. 1 of Alabama, Military Area No. 1 of Mississippi, Military Area No. 1 of Louisiana, Military Area No. 1 of Texas and Military Area No. 1 of New Mexico, as defined and designated by Public Proclamation No. 1, dated May 30, 1942, Headquarters Southern Defense Command, San Antonio, Texas, Walter Krueger, Lt. Gen., United States Army, Commanding.

VIII.

Plaintiff applied in writing to the defendant, Lt. Gen. John L. De Witt, on April 28, 1943, requesting and petitioning said defendant to cancel said Order of Exclusion or to extend the time to a period longer than 10 days, and requested that

the United States Government furnish to the plaintiff compensation equal to that which he could earn at his trade or profession until such [8] time as he could secure employment in his profession, and further petitioned and requested of said defendant that the United States Government furnish him with support and sustenance until such time as he could secure employment in the event of the Order of Exclusion was carried out and plaintiff was sent to some section of the United States where he was without friends or acquaintances, and plaintiff was advised by the defendant, L. G. White, Investigator for Headquarters Western Defense Command and Fourth Army, on April 30, 1943, that his petition was wholly denied.

IX.

Plaintiff at all times since residing in the United States and its territories has conducted himself as a respectable and law-abiding citizen; that he has never been charged with a violation of the penal laws of the United States or any of the states or territories within the United States; that by reason of plaintiff's conduct, he has established a reputation for honor, truth and veracity and is a peaceable, law-abiding American citizen; that the Order of Exclusion referred to as Exhibit F in effect convicts plaintiff of being disloyal to the United States and publishes to the world that he is disloyal and a dangerous citizen to the extent that he is not permitted to reside in the United States except at those places designated by the defendants; that

the information upon which the Order of Exclusion was issued was and is wholly false; that no ground or basis exists for such an order, and that this fact can and will be established by competent legal evidence if the plaintiff is given an opportunity to present witnesses and to have a hearing or a trial before this Honorable Court.

X.

Plaintiff is not a member of the military forces of the United States and he is not subject to military law or the control or orders of the officers of the United States Army or Navy;

No martial law has been declared in the area from which [9] the plaintiff has been excluded or in the area within which plaintiff has been confined, and no martial law has been declared elsewhere in the continental United States.

At all times herein all of the Courts in the State of California, state and federal, have been open and have administered the same full quality of justice heretofore meted out by them, and have been available to any party desiring to charge the plaintiff with crime or wrongdoing.

XI.

Said orders were issued without according the plaintiff a full or fair hearing, without the plaintiff having been informed of the nature or the cause of any charge or accusation against him; nor has any charge, accusation, or presentment by a grand jury, or at all, been lodged or filed against him;

nor has the plaintiff had any trial by jury or a public trial; nor was the plaintiff advised of the nature or import of any testimony or evidence in the possession of said Board against him upon which testimony or evidence said Board was relying, nor was the plaintiff given an opportunity to refute such testimony or to cross-examine witnesses against him as aforesaid; nor was the plaintiff accorded the right to be represented by counsel and to have such counsel adequately protect his rights through cross-examination, or the inspection of any testimony or evidence against the plaintiff; and said orders were issued without any and/or without substantial evidence to support them or either of them, but on the contrary, said orders are wholly arbitrary and capricious and without any warrant of law, and in defiance of the constitutional rights of the plaintiff, as is more particularly described elsewhere herein.

XII.

Said orders, in addition, are not warranted by military [10] or any other necessity either in the City or County of Los Angeles, anywhere in California, or within the Western Defense Command, or anywhere within the United States; neither of said orders was issued in the face of any existing emergency; or in good faith, nor were or are they, or either of them, directly related to any emergency; nor was there any danger in said City and County of Los Angeles, in said State of California, within said Western Defense Command,

or anywhere in the United States, then immediate and impending, requiring or justifying such orders.

On the contrary, the plaintiff alleges that the sole reason for the issuance of said orders was to harass and persecute the plaintiff because of his religious and economic views.

XIII.

The defendants have, since April 14, 1943, enforced and are enforcing said orders at the present time, and they have threatened, and they intend to, carry out and enforce said orders and each of them; and will unless restrained from so doing by order of this Court, carry out and execute each of said orders.

The execution of said orders up to the present time have damaged the plaintiff in a sum in excess of \$3,000.00, exclusive of interest and costs; and the execution of said orders as threatened will in addition damage the plaintiff in a sum in excess of \$3,000.00, exclusive of interest and costs, and more particularly in the following respects and particulars:

1—The Exclusion Order

The Order of Exclusion aforesaid has the effect of com- [11] pletely prohibiting the plaintiff from practicing his present occupation for the reason that at the present time there are no opportunities for the plaintiff to follow his said occupation as a photographer and photo technician in any community outside of the Western Defense Command, and from all of said area plaintiff is by said order excluded. That said Order of Exclusion will make

it impossible for the plaintiff to secure employment in his profession or trade; that the plaintiff is an experienced photographer and photo technician, has earned and is capable of earning a salary of \$200.00 or more per week; that the enforcement of said Order will deprive the plaintiff of the right to follow his profession to earn a livelihood.

Additionally the enforcement of said Order will abridge the constitutional rights of the plaintiff, including:

a—The right of the plaintiff to freedom of religion, freedom of speech, freedom of the press, freedom of assemblage, and the right to petition the Government for a redress of grievance.

b—The plaintiff's right to a fair and full hearing, to be informed of the nature or cause of any accusation against him, to a presentment or an indictment of a grand jury, to a public trial, to a trial by jury, and to counsel.

c—The right of the plaintiff to establish and maintain a home, the right to free movement; and the right to equality of treatment under the law and to be free from discrimination and persecution solely because of his religious and economic views; said rights and each of them are of a value in excess of \$3,000.00, exclusive of interest and costs.

The restraint imposed upon the plaintiff by virtue of said letter order has up to the present time resulted in damage to the plaintiff in a sum in excess of \$3,000.00 and costs; and the continuing enforcement of said orders will result in further damage to the plaintiff. [12]

Additionally, the plaintiff has been damaged in a sum in excess of \$3,000.00, exclusive of interest and costs, because said letter order constitutes an abridgement of the rights of the petitioner as guaranteed by the United States Constitution.

XIV.

The plaintiff has already suffered irreparable injury by the enforcement by the defendants of the orders aforesaid, and will continue to suffer irreparable injury by virtue of the enforcement of said orders, unless said enforcement is restrained by orders of this Court. Plaintiff does not have an adequate remedy at law.

XV.

The acts of the defendants aforesaid, and the threatened acts of the defendants as hereinbefore stated have abridged and threaten to abridge, respectively, the following constitutional rights of the plaintiff:

1—The First Amendment—The right of the plaintiff to freedom of religion, freedom of speech, freedom of the press, freedom of assemblage, and the right to petition the Government for a redress of grievances.

2—The Fifth Amendment—the rights to liberty and property and more particularly, the right to earn a livelihood and engage in his profession or trade, the right to establish and maintain a home, the right to free movement, and the right to equality of treatment under the law and to be free from dis-

crimination and persecution solely because of religious and economic views.

3—The Sixth Amendment—The rights to a fair and full hearing, to be informed of the nature or cause of any accusation against him, to a presentment or an indictment of a grand jury to a public trial, to a trial by jury, and to counsel.

For a Separate and Further Cause of Action, Plaintiff Alleges That: [13]

I.

Plaintiff here repeats each and every allegation contained in the first cause of action as if fully set forth herein in this second cause of action.

II.

The acts of the defendants in issuing and enforcing the orders aforesaid were committed maliciously, wantonly, oppressively, and in a reckless disregard of the rights of plaintiff, by virtue whereof the plaintiff is entitled to punitive damages.

III.

Plaintiff has sustained actual damages by reason of the deprivation of his constitutional rights, and of mental pain, anguish and suffering, and damage to his reputation, in the sum of \$50,000.00.

Wherefore, plaintiff prays for relief as follows:

1—For an order of this Court adjudging and decreeing the military orders aforesaid to be void and unconstitutional; and that said orders abridge the constitutional rights of the plaintiff as particularly hereinabove set forth.

2—For a temporary restraining order restraining and enjoining; for a preliminary injunction pending the final determination of this action restraining and enjoining; and for a permanent injunction perpetually restraining and enjoining the defendants and each of them, and their and each of their agents, servants and representatives directly or indirectly by any means, method or device whatsoever from executing or causing to be executed or compelling plaintiff to execute said orders.

3—That an order to show cause issue to defendants directing them to show cause why a preliminary injunction pendente lite should not issue, restraining the defendants pendente lite, as above set forth. [14]

4—That the defendants be ordered to pay to plaintiff as actual damages, the sum of \$50,000.00; and as exemplary damages, the sum of \$5,000.00, together with costs of this action.

5—For such other and further relief as to this Court seems just and proper.

LORRIN ANDREWS

Attorney for Plaintiff

Verified: Kenneth Alexander

Date: May 1, 1943

Notary: Porter Blackburn [15]

EXHIBIT A

In reply address not the signer of this letter, but Bureau of Navigation, Navy Department, Washington D. C.
Refer to No.

Nav—631—HHC

MM

Navy Department
Bureau of Navigation
Washington, D. C.

26 September 1939

Dear Sir:

Your letter of recent date has been made a part of your service record, and the offer of your services is appreciated. Should the necessity arise, your offer and qualifications will be given due consideration.

During this limited national emergency however, the age limit for reenlisting ex-service men who have been separated from active service more than eight years, has been set at thirty-five years. It is not believed that it will be necessary to call upon you for your services.

It is regretted that a more favorable reply can not be given.

Sincerely yours,

C. W. NIMITZ,

Chief of Bureau.

C. C. HARTMAN

C. C. Hartman

By direction.

Mr. Kenneth Alexander,
Post Office Box 181,
Station S,
Los Angeles, Calif. [16]

EXHIBIT B

333 South Hope Street,
Los Angeles, California.

October sixth 1940.

To. The War Department,
Washington . D C .

Subject . Use of services of veteran of world war .

The writer holds an honorable discharge from the United States Army, also one for United States Navy. He served in France for ten months in the Naval Aviation branch of the Navy. He held the rate of Chief Petty officer, and was recommended for a commission.

He did expert photographic work, was instrumental in establishing photographic headquarters in various camps, did mapping, and inspecting the

installation of photographic equipment in air services. He is at this moment an expert photographer, including color processes.

In France he became familiar with this work under active war conditions, when attached to the Northern Bombing groupe in that country.

He is now in good health, is forty eight years of age, is competent to instruct men, and to handle them.

Information is respectfully requested regarding any provisions that may have been made regarding men with this qualification.

Respectfully.

KENNETH ALEXANDER. [17]

EXHIBIT C

Address reply to
Chief of the Air Corps
War Department
Washington, D. C.

War Department
Office of the Chief of the Air Corps
Washington

December 22, 1941

Mr. Kenneth Alexander,
333 South Hope Street,
Los Angeles, California.

Dear Sir:

This will acknowledge receipt of your letter of December 9, 1941, regarding status in respect to

your application for appointment in the Army of the United States.

Your application has been referred to this office and at the present time is being processed here. When a decision has been reached, you will be advised by the Adjutant General.

It is regretted that a more informative reply cannot be made at this time.

Yours very truly,

L. B. HICKAM

L. B. Hickam,

Major, Air Corps,

Assistant Chief,

Military Personnel Division.

[18]

EXHIBIT D

333 South Hope Street

Los Angeles, California.

Dec. 8th 1941

Headquarters,

Air Force

United States Army

Washington D. C.

Information is respectfully requested, regarding condition of the undersigned, in respect to his application for appointment in the U. S. Army reserve.

All forms have been filled out and forwarded, and medical examination completed at March field, last October.

Letter giving my own report of my experience and believed qualifications is already on file.

I am anxious to serve my Country in this war.

Respectfully,

KENNETH ALEXANDER. [19]

EXHIBIT E

(Office Copy)

Headquarters Western Defense Command and
Fourth Army

Individual Exclusion Hearing Board

Presidio of San Francisco, California.

February 27, 1943.

To Kenneth Alexander,

333 South Hope St., Los Angeles, Calif.

1. A Board of Officers has been appointed by the Commanding General, Western Defense Command and Fourth Army (pursuant to Executive Order 9066 dated February 19, 1942, instructions of the Secretary of War) to consider whether military necessity requires that you be ordered excluded from certain Military Areas of the Western Defense Command of the Southern Defense Command and of the Eastern Defense Command which areas are defined in Public Proclamation issued by the Commanding Generals of the respective Commands.

2. The Board of Officers will be convened on Thursday the 11th day of March, 1943, at the hour of 1:30 P. M. at Room 216, Rowan Building, 458 S. Spring St., Los Angeles, California. You may, if you so elect, appear before it at that time and place, and you will be informed of the general

nature and scope of the inquiry and afforded an opportunity to present evidence in your own behalf and to answer questions or make a statement under oath or affirmation. Material in the hands of the Board will not be made available for your inspection.

3. It is requested that you notify the Board in writing at least 24 hours prior to the hearing whether you will appear.

4. The following are pertinent regulations regarding the conduct of the investigation:

a. All matters pertaining to the inquiry are confidential and no publicity will be given by the Board.

b. Your appearance before the Board is optional on your part. [20]

c. You may be accompanied by counsel to act as your personal advisor; he will not be heard by the Board, nor will he be permitted to examine witnesses. In general, the interrogation of witnesses will be conducted by the Recorder, on behalf of yourself and of the Board.

d. You may refuse to answer any question asked by the Board, without assigning any specific reason for your refusal.

e. Any evidentiary statements by you to the Board must be under oath or affirmation.

f. The inquiry by the Board is in no sense a criminal proceeding; you are not charged with the commission of any penal offense. For your information, Congress has by the enactment of Public Law No. 505, 77th Congress, approved March 21,

1942 (56 Statutes at Large, p. 240) provided penalties for the violation of an order of exclusion. The act in question reads as follows:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall enter, remain in, leave, or commit any act in any military area or military zone prescribed under the authority of an Executive Order of the President by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area, or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order, [21] and that his act was in violation thereof, be guilty of a misdemeanor and upon conviction shall be liable to a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both, for each offense.”

(Signed) RANDELL LARSON,

Randell Larson

Lt. Col. F.A.

Recorder. [22]

EXHIBIT F

Headquarters Western Defense Command and
Fourth Army

Presidio of San Francisco, California
Individual Exclusion Order.

April 14, 1943

No. 1K-7

To Kenneth Alexander,
333 South Hope Street
Los Angeles, California.

Under authority of Executive Order No. 9066, February 19, 1942, and letter of the Secretary of War, February 20, 1942, and pursuant to a determination that the present action is dictated by military necessity, you are hereby prohibited, after the expiration of ten days from 12:00 o'clock midnight of the day you receive this order, from being in, remaining in, or entering into military *Military* Areas Nos. 1 and 2 (comprising the States of Arizona, California, Oregon and Washington) Western Defense Command, as established by Public Proclamations Nos. 1 and 2, this headquarters, dated March 2, 1942, and March 16, 1942, respectively, and any amendments thereon. This prohibition extends to any zones or areas, which may hereafter be similarly designated, defined and established, but as to such additional zones or areas a period of ten days from and after the date of the proclamation establishing such additional zones or areas is permitted you to comply with this prohibition. This prohibition shall continue in force until revoked in writing by competent authority.

Under authority of Executive Order No. 9066, February 19, 1942, and letter of the Secretary of War, July 15, 1942, and pursuant to determination that the present action is dictated by military necessity, you are also hereby prohibited from entering into, being in, or remaining in, at any time from and after midnight of the date upon which you receive this order, Eastern Military Area, comprising the States of Maine, New [23] Hampshire, Vermont, North Carolina, South Carolina, Georgia the District of Columbia and part of the State of Florida, as defined and designated by Proclamation No. 1, dated May 16, 1942, Headquarters, Eastern Defense Command and First Army, Governor Island, New York, H. A. Deum, Lieutenant General, U. S. Army, Commanding, and from entering into, being in, or remaining in, from and after said time and date, Military Area No. 1 of Florida, Military Area No. 1 of Alabama, Military Area No. 1 of Mississippi, Military Area No. 1 of Louisiana, Military Area No. 1 of Texas and Military Area No. 1 of New Mexico, as defined and designated by Public Proclamation No. 1, dated May 30, 1942, Headquarters, Southern Defense Command, San Antonio, Texas, Walter Krueger, Lieutenant General, U. S. Army, Commanding.

Within forty-eight hours after service upon you of this order you are required to report in person to a representative of this headquarters at such place as may be designated by the person serving this order, to make compliance herewith, and at

that time to have your photograph, finger prints and a specimen signature taken.

Prior to your departure in compliance herewith, you will communicate in writing to Wartime Civil Control Administration, Western Defense Command and Fourth Army, 1251 Market Street, San Francisco, California, the time of your proposed departure, initial and ultimate destinations, route to be followed and mode of travel, upon arrival at ultimate destination, you will, in person, report the fact of your arrival and your address at such destination to the Special Agent in Charge of the nearest office of the Federal Bureau of Investigation, Department of Justice.

Failure to comply with the foregoing will subject you to the criminal penalties by Public Law No. 505, 77th Congress, approved March 21, 1942, entitled "An Act to Provide a Penalty [24] for Violation of Restrictions or Orders with Respect to Persons Entering, Remaining in, Leaving or Committing any Act in Military Areas or Zones."

(Signed) J. L. DeWITT

J. L. DeWitt

Lieutenant General,

U. S. Army Commanding.

A True Copy

(Signed) HUGH T. FULLERTON,

Hugh T. Fullerton

Major, A.G.D.,

Assistant Adjutant General.

[Endorsed]: Filed May 7, 1943 [25]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR INJUNCTION
PENDENTE LITE

To the Above-Named Defendants, and to Leo V. Silverstein, Esq., United States Attorney for the Southern District of California:

You, and Each of You, Will Please Take Notice that on the 24th day of May, 1943, at 10:00 o'clock A.M., the plaintiff will move the above-entitled Court, in the Court room of Honorable Peirson M. Hall, Judge of said Court, for an Order enjoining the defendants, and each of them, pendente lite, directly or indirectly, from executing, or causing to be executed, those certain [26] orders denominated in the plaintiff's complaint as Exclusion Order dated April 14th, 1943.

The plaintiff will rely upon the complaint on file in the above-entitled cause, the Points and Authorities heretofore filed.

Dated, this 11th day of May, 1943.

LORRIN ANDREWS

Attorney for Plaintiff

[Endorsed]: Filed May 18, 1943 [27]

[Title of District Court and Cause.]

NOTICE OF MOTION AND MOTION TO DENY
PLAINTIFF'S APPLICATION FOR A
MOTION PENDENTE LITE AND TO
STRIKE CERTAIN PORTIONS OF PLAIN-
TIFF'S COMPLAINT, AND TO DISMISS
PLAINTIFF'S COMPLAINT

To: Kenneth Alexander and Lorrin Andrews, Esq.

Please Take Notice that in the United States Court Room of the Honorable Peirson M. Hall, Judge of said Court, at the Post Office and Court-house Building in the City of Los Angeles, on the 24th day of May, 1943, at the opening of the court on that day or as soon thereafter as counsel can be heard, the United States of America, appearing in behalf of the defendants Lt. Gen. John L. DeWitt and R. B. Hood, by Leo V. Silverstein, United States Attorney for the Southern District of California, and Wm. W. Worthington, Assistant United States Attorney for said district, will move the above-entitled court:

A. To deny the motion of plaintiff herein for an injunction pendente lite against said defendants Lt. Gen. John L. DeWitt and R. B. Hood from directly or indirectly executing or causing to be executed a certain Order denominated in plaintiff's complaint as Exclusion Order, dated April 14, 1943.

[28]

B. 1. To strike from line 23 of paragraph II, on page 2, of plaintiff's complaint, beginning with the word "plaintiff" through the word "profession"

in line 9 of said paragraph II, on page 4 of plaintiff's complaint.

2. To strike from line 13 of paragraph VI, on page 6 of plaintiff's complaint, beginning with the words "the said Board" to the end of paragraph VI, on page 7 of plaintiff's complaint.

3. To strike all of paragraph VIII on pages 7 and 8 of plaintiff's complaint.

4. To strike all of paragraph IX on page 8 of plaintiff's complaint.

5. To strike all of paragraph XI on page 9 of plaintiff's complaint.

6. To strike all of paragraph XII on pages 9 and 10 of plaintiff's complaint.

7. To strike from line 25 of paragraph XIII on page 10 of plaintiff's complaint, beginning with the words "The execution" through the word "livelihood" on page 11 of said paragraph XIII of plaintiff's complaint.

8. To strike from line 27 of paragraph XIII of plaintiff's complaint, beginning with the words "said rights" on page 11, through to the end of said paragraph XIII.

9. To strike so much of paragraph I of plaintiff's Separate and Further Cause of Action as by reallegation alleges the above stated portions of the First Cause of Action.

10. To strike all of paragraphs II and III of plaintiff's Separate and Further Cause of Action.

C. To dismiss the above-entitled action as to the defendants Lt. Gen. John L. DeWitt and R. B.

Hodd, on the ground that plaintiff has failed to state a claim as to them upon which relief can be granted.

Said motions are based upon the points and authorities attached hereto and hereby incorporated herein by reference, and other documents [29] and papers on file in this action, and which may hereafter be filed in this action.

Dated this day of May, 1943.

LEO V. SILVERSTEIN

United States Attorney

WM. W. WORTHINGTON

Assistant U. S. Attorney

[Endorsed]: Filed May 24, 1943 [30]

At a stated term, to wit: The February Term, A. D. 1943 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 25th day of May in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable: Peirson M. Hall, District Judge

[Title of Cause.]

This cause coming on for hearing on plaintiff's motion for injunction pendente lite, pursuant to noticed filed May 18, 1943, and hearing on defend-

ants' motion to deny plaintiff's application for an injunction pendente lite, to strike portions of plaintiff's complaint, and to dismiss said complaint; Lorrin Andrew, Esq., appearing on counsel for plaintiff; Leo V. Silverstein, U. S. Attorney, and W. W. Worthington, Assistant U. S. Attorney, appearing for the defendants; James J. Marquardt, Court Reporter, being present and reporting the proceedings.

On motion of Attorney Andrews, it is ordered that Avery Blount, Esq., be associated as counsel for the plaintiff and that A. L. Wirin, Esq. be allowed to appear herein as *amicus curiae*.

Attorney Andrews makes a statement in support of said motion for injunction until this case can be heard on its merits, and on motion of said Attorney Andrews the second cause of action is ordered stricken.

Attorney Wirin makes a statement to the effect that the summons served upon the plaintiff by the military is comparable to an indictment and a sentence, as well as a threat to exclude the plaintiff from the State of California. [31]

Attorney Silverstein offers U. S. Exhibits Nos. 1, 2, 3 and 4, which are ordered admitted into evidence for the purpose of the Court taking judicial notice thereof.

The Court orders items B-1, 2, 3, 5, 6, 7 and 8 of Government's motion to strike from the complaint denied, and that item B-4 is granted in part, and stricken beginning with the words "* * * that the

order of exclusion * * *” to the end of the paragraph; that items 9 and 10 be granted on motion of plaintiff, and as to the prayer of the complaint, paragraph 4 thereof is ordered stricken on motion of the plaintiff.

Attorney Silverstein argues in opposition to motion for injunction pendente lite.

It is ordered that motion for injunction pendente lite be, and it hereby is, denied, and that the complaint be, and it hereby is, dismissed; counsel for plaintiff to prepare judgment of dismissal.

33/667-8 [32]

In the District Court of the United States in and
for the Southern District of California, Central
Division

No. 2909—P.H.

KENNETH ALEXANDER,

Plaintiff,

vs.

LT. GEN. JOHN L. DE WITT, RANDELL LAR-
SON, LT. COL., F. A., R. B. HOOD, Special
Agent in Charge of Federal Bureau of Inves-
tigation, United States Department of Justice,
at Los Angeles, California, HUGH T. FUL-
LERTON, Major, A. G. D., Assistant Adjutant
General, L. G. WHITE, Investigator for Head-
quarters Western Defense Command and
Fourth Army, L. F. SLOAN, Area Supervisor,
War Relocation Authority, DOE ONE, DOE
TWO and DOE THREE,

Defendants.

JUDGMENT

Plaintiff moved for an Injunction Pendente Lite
in the above entitled matter.

No service of process or notice was had upon
any of the defendants, but by agreement between
plaintiff's counsel and the United States Attorney
for the Southern District of California, acting on
behalf of Lt. General John L. De Witt, Commanding
General of the United States Army of the Western
Defense Command and Fourth Army, and R. B.

Hood, Special Agent in Charge of the Federal Bureau of Investigation of the United States Department of Justice located at Los Angeles, California, said motion came on for hearing on the 25th day of May at the hour of 9:30 o'clock in the morning, at which time there [33] also came on for hearing motions of said defendants De Witt and Hood to strike portions of said complaint, and a motion of said last named defendants to dismiss said action on the ground that the complaint did not state sufficient facts to constitute a cause of action.

Plaintiff appeared by his counsel, Lorrin Andrews, and said defendants Lt. General John L. De Witt and R. B. Hood were represented by Hon. Leo V. Silverstein, United States Attorney and W. W. Worthington, Assistant United States Attorney. A. L. Wirin upon motion appeared as Amicus Curiae.

On plaintiff's motion, the second cause of action set forth in plaintiff's complaint was ordered dismissed.

Arguments were then heard from respective counsel, whereupon it was ordered that defendants' motion to strike be granted in part and denied in part; that plaintiff's motion for temporary restraining order and injunction pendente lite be denied, and that motion of defendants De Witt and Hood to dismiss be granted, both on the ground that said complaint does not state a cause of action.

Now, Therefore, it is Hereby Adjudged and Decreed that the within action be and the same

is hereby dismissed as to said defendants Lt. General John L. De Witt, Commanding General of the United States Army of the Western Defense Command and Fourth Army, and R. B. Hood, Special Agent in Charge of the Federal Bureau of Investigation of the United States Department of Justice located at Los Angeles, on the ground that plaintiff's complaint does not state facts sufficient to constitute a cause of action.

Dated at Los Angeles, California, this 15th day of June, 1943.

PEIRSON M. HALL

Judge, United States District
Court.

Judgment entered Jun 15, 1943 Docketed Jun 15, 1943 C. O. Book 17 Page 668 Edmund L. Smith, Clerk, By J M Horn Deputy.

[Endorsed]: Filed Jun 15, 1943 [34]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT
OF APPEALS UNDER RULE 73-B

Notice Is Hereby Given that Kenneth Alexander, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order of the District Court of the United States in and for the Southern District of California, Central Division, denying plaintiff's motion for a temporary restraining order and an injunction pendente

lite, and from the order granting the motion of defendants De Witt and Hood to dismiss the complaint against them on the ground that it does not state a cause of action, entered on the 15th day of June, 1943, and from the final judgment entered in this action on the 15th day of June, 1943, as to the [35] defendants, Lt. Gen. John L. De Witt and R. B. Hood, Special Agent in Charge of Federal Bureau of Investigation, United States Department of Justice, at Los Angeles, California.

Dated, this 21st day of June, 1943.

AVERY M. BLOUNT

LORRIN ANDREWS

By AVERY M. BLOUNT

Attorneys for Plaintiff

[Endorsed]: Filed & mailed copy to Charles H. Carr, Atty. for Defts. Jun 25, 1943 Edmund L. Smith, Clerk, By John A. Childress Deputy Clerk
[36]

National Automobile Insurance Company

Bond No. 26821

Home Office — Los Angeles

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men By These Presents:

That we, Kenneth Alexander, as Principal, and the National Automobile Insurance Company, a cor-

poration organized and existing under the laws of the State of California and authorized to transact a surety business in the State of California, as Surety, are held and firmly bound unto Lt. Gen. John L. DeWitt, Et al, in the full and just sum of Two Hundred Fifty and NO/100 (\$250.00) Dollars, to be paid to the said Lt. Gen. John L. DeWitt, Et al, their certain Attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of June, in the year of our Lord One Thousand Nine Hundred and Forty-Three.

Whereas, on June 15th, 1943, a Judgment was entered in the District Court of the United States, Southern District of California, Central Division, in the above entitled case and as the Plaintiff, Kenneth Alexander, has filed notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in the State of California.

Now, therefore, the condition of the above obligation is such that if Kenneth Alexander, Plaintiff, shall prosecute his appeal to effect, and answer all costs if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, then the above obligation to be void; else to remain in full force and virtue.

Acknowledged before me the day and year first above written.

KENNETH ALEXANDER

Principal.

[Seal]

NATIONAL AUTOMOBILE INSURANCE COMPANY,

By LLOYD H. JOHNSTON,

LLOYD H. JOHNSTON,

Attorney-in-Fact.

Examined and recommended for approval as provided in Rule #13.

The premium charged for this bond is \$10:00 per annum. [37]

State of California

County of Los Angeles—ss.

On this 24th day of June, in the year 1943, before me, M. M. Jackson, a Notary Public in and for said County and State, personally appeared Lloyd H. Johnston known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the National Automobile Insurance Company, and acknowledged to me that he subscribed the name of the National Automobile Insurance Company thereto as principal, and his own name as Attorney-in-fact.

[Seal]

M. M. JACKSON

Notary Public in and for said
County and State.

My Commission Expires April 30, 1947.

[Endorsed]: Filed June 25, 1943 [38]

[Title of District Court and Cause.]

STIPULATION RE EXHIBITS

It Is Hereby Stipulated by and between counsel for the appellant, Kenneth Alexander, and counsel for the appellees, Lt. Gen. John L. DeWitt and R. B. Hood, Special Agent in Charge of Federal Bureau of Investigation, United States Department of Justice, at Los Angeles, California, that all the original exhibits in the above-entitled action shall, by the Clerk of the District Court be forwarded to the Clerk of the Circuit Court of Appeals for the Ninth Circuit.

Dated, this 30th day of July, 1943.

AVERY M. BLOUNT

LORRIN ANDREWS

By LORRIN ANDREWS

Attorneys for Appellant [39]

CHARLES H. CARR

United States Attorney

By JAMES L. CRAWFORD

Asst. United States Attorney,

Attorney for Appellees

It Is So Ordered:

H. A. HOLLZER

Judge of United States District Court

[Endorsed]: Filed July 30, 1943. [40]

[Title of District Court and Cause.]

DESIGNATION OF RECORD TO BE USED
ON APPEAL

A Notice of Appeal having been heretofore filed by the plaintiff in the above entitled cause, for an appeal to the Circuit Court of Appeals for the Ninth Circuit from certain orders and the judgment of the District Court of the United States, in and for the Southern District of California, Central Division, in the above captioned proceedings, the appellant, Kenneth Alexander, now designates the entire record as his record on appeal, said record on appeal to consist of the following listed pleadings, papers, documents and matters: [41]

1—Complaint for Preliminary Injunction and for Damages;

2—Summons issued thereon;

3—Notice of Motion for Injunction Pendente Lite;

4—Defendants' Notice of Motion and Motion to Deny Plaintiff's Application for a Motion Pendente Lite and to Strike Certain Portions of Plaintiff's Complaint, and to Dismiss Plaintiff's Complaint;

5—All Exhibits offered by Defendants herein;

6—All Minute Orders of above entitled Court in respect to above captioned proceedings;

7—Judgment;

8—Notice of Appeal to Circuit Court of Appeals under Rule 73;

9—Bond on Appeal;

10—Designation of Record to be Used on Appeal;

11—All other pleadings and proceedings had herein.

AVERY M. BLOUNT and
LORRIN ANDREWS

By AVERY M. BLOUNT

Attorneys for Plaintiff and
Appellant

Received copy of the within Designation of Record etc. this 2 day of July, 1943 Charles H. Carr, U. S. Atty. By MacKay.

[Endorsed]: Filed July 2, 1943 [42]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 42 inclusive contain full, true and correct copies of: Complaint for Preliminary Injunction and for Damages; Notice of Motion for Injunction Pendente Lite; Notice of Motion and Motion to Deny Plaintiff's Application for Injunction Pendente Lite and to Strike Certain Portions of Plaintiff's Complaint, and to Dismiss Plaintiff's Complaint; Minute Order Entered May 25, 1943; Judgment; Notice of Appeal; Cost Bond on Appeal; Stipulation and Order; and Designation of

Record on Appeal, which, together with the Original Exhibits transmitted herewith, constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for comparing, correcting and certifying the foregoing record amount to \$7.30 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 2 day of August, 1943.

[Seal] EDMUND L. SMITH, Clerk

By THEODORE HOCKE

Deputy Clerk.

[Endorsed]: No. 10514. United States Circuit Court of Appeals for the Ninth Circuit. Kenneth Alexander, Appellant, vs. Lt. General John L. De Witt, Commanding General of the United States Army of the Western Defense Command and Fourth Army, and R. B. Hood, Special Agent in Charge of the Federal Bureau of Investigation of the United States Department of Justice located at Los Angeles, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed August 3, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10514

KENNETH ALEXANDER,

Appellant,

vs.

LT. GEN. JOHN L. DeWITT and R. B. HOOD,
Special Agent in Charge of Federal Bureau of
Investigation, United States Department of
Justice, at Los Angeles, California,

Appellees.

STATEMENT OF POINTS TO BE RELIED ON
BY APPELLANT AND DESIGNATION OF
RECORD ON APPEAL

1. That the complaint filed in the above-entitled action by the plaintiff and appellant set forth a good and sufficient cause of action against the defendants Lt. Gen. John L. DeWitt and R. B. Hood, Special Agent in charge of Federal Bureau of Investigation, United States Department of Justice, at Los Angeles, California, and should not have been dismissed as insufficient as to said defendants.

2. That the military tribunal which entered an order deporting the appellant was not a competent tribunal for the trial or judgment of the appellant and acted in violation of the 4th, 5th and 6th Amendments to the Constitution of the United States.

3. That the petition of the appellant for an injunction pendente lite, together with the pleadings

in said cause, entitle said appellant to a temporary injunction restraining the defendants and appellees from enforcing the order of the military tribunal, pending the trial of this suit.

Appellant hereby adopts as his designation of the record on appeal in the instant case that certain "Designation of Record to be used on Appeal" heretofore filed in the District Court of the United States in and for the Southern District of California, Central Division, on or about July 1, 1943.

Dated, this 31st day of July, 1943.

KENNETH ALEXANDER,

Appellant

By LORRIN ANDREWS and

AVERY M. BLOUNT

By LORRIN ANDREWS,

His Attorneys.

Received copy of the within Statement of Points to be Relied On by Appellant and Designation of Record on Appeal this 31st day of July, 1943.

CHARLES H. CARR

United States Attorney

By R. Mac KAY,

Asst. U. S. Attorney.

[Endorsed]: Filed Aug. 3, 1943. Paul P. O'Brien,
Clerk.